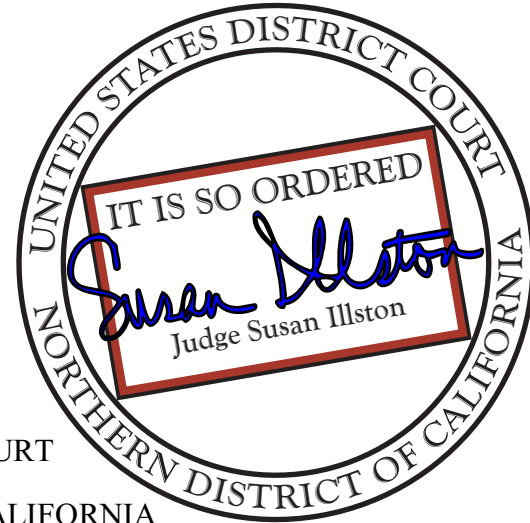


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The case management conference shall be heard on
 Friday, March 12, 2010, at 3:00 p.m.
 A joint case management conference statement shall be
 filed one week prior to the conference.

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10 Attorneys for Defendant
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11
 12 UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15 CEDRIC BRADY, DR. CHARLES
 HOVDEN, MARION HOVDEN, DR.
 16 EUGENE KREPS, DR. JOHN McNAMARA,
 DR. HISAJI SAKAI, and JEAN SAKAI,
 17 Individually and On Behalf Of All Others
 Similarly Situated,

CASE NO.: 3:08-CV-05746-SI
 M-10-2124

18 Plaintiffs,

19 v.

20 CONSECO, INC. and CONSECO LIFE
 21 INSURANCE COMPANY,

22 Defendants.

**NOTICE OF WITHDRAWAL OF
 CONSECO LIFE'S MOTION TO
 TEMPORARILY STAY ALL
 PROCEEDINGS AND SUBMISSION
 CONCERNING SCHEDULING
 CONFERENCE**

Date: February 12, 2010
 Time: 9:00 a.m.
 Place: Courtroom 10
 Judge: The Honorable Susan Illston

1 **I. NOTICE OF WITHDRAWAL OF MOTION TO STAY**

2 Defendant Consec Life Insurance Company ("Consec Life") respectfully
 3 withdraws its Motion To Temporarily Stay All Proceedings Pending Determination Of The Judicial
 4 Panel On Multidistrict Litigation ("Motion to Stay") (Docket No. 94). This withdrawal is based on
 5 the recent order of the MDL Panel consolidating this action ("Brady") with the other two pending
 6 federal court actions, and this Court's establishment of an MDL docket ("MDL Docket").¹ (See
 7 Brady Docket No. 107; see also In re Consec Life Ins. Co., Case M:10-cv-02124-SI (N.D. Cal.),
 8 and Docket No. 1 thereto.)

10 **II. SUBMISSION CONCERNING SCHEDULING CONFERENCE**

11 In light of the order from the MDL Panel and the establishment of the MDL Docket,
 12 Consec Life respectfully submits that a scheduling conference to coordinate or consolidate
 13 discovery and other pretrial proceedings may be appropriate. Should the Court be inclined to
 14 schedule a conference, one potential date is March 5, 2010. That date is currently set aside for a
 15 hearing on the Brady plaintiffs' motion for class certification, but Consec Life submits that it
 16 would be premature to hear argument on that motion at that time: the McFarland action is also a
 17 putative class action, but -- unlike Brady -- the case has been stayed and plaintiff's motion for class
 18 certification has not yet been fully briefed. Given these competing and, to some degree,
 19 overlapping class certification motions, Consec Life respectfully submits that piecemeal argument
 20
 21
 22
 23
 24
 25

26 ¹ The other two actions are McFarland v. Consec Life Ins. Co., No. 3:09-cv-598-TJC-MCR
 27 (M.D. Fla. filed July 2, 2009) (putative nationwide class action) ("McFarland") and Muldrow v.
 28 Consec Life Ins. Co., No. 4:08-cv-552-RH-WCS (N.D. Fla. filed Dec. 12, 2008) (individual suit
 on behalf of two plaintiffs) ("Muldrow").

1 and adjudication on this important issue would be inefficient, not only for the parties but
2 particularly for the Court.²

3 Plaintiff's counsel in McFarland agrees to a conference on March 5, 2010; plaintiffs'
4 counsel in Brady similarly agrees to a conference but does not agree to defer the hearing on their
5 motion for class certification.
6

7 Dated: February 10, 2010

Respectfully submitted,

8 /s/ David S. Clancy

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25 Attorneys for Defendant
26 Conseco Life Insurance Company

27 ² Similarly, Conseco Life believes that deposition discovery prior to coordination between, or
28 consolidation of, the MDL cases would be inefficient, duplicative and wasteful, and Conseco Life
is prepared to file motions for protective orders if necessary.